

1 **WO**

2
3
4
5
6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA
8

9 Jerry J. Lukes; Blanche Lukes, husband)
and wife,

No. 04-2022-PHX-JAT

10 Plaintiffs,

ORDER

11 vs.

12
13 American Family Mutual Insurance)
Company, a Wisconsin corporation, et al.,)

14 Defendant.
15
16

17 Pending before the Court is the Plaintiffs' Motion for Reconsideration (doc. 113).
18 The Court now rules on the motion.

19 I. INTRODUCTION

20 On August 24, 2006, the Court granted the Defendants Motion for Summary
21 Judgment with respect to the Plaintiffs' claim of bad faith. The Plaintiff now moves for
22 reconsideration of that decision on the ground that the Court "overlooked" several of the
23 Plaintiff's arguments.

24 II. LEGAL ANALYSIS AND CONCLUSION

25 A motion seeking reconsideration of a grant of summary judgment is appropriately
26 brought under Federal Rule of Civil Procedure 59(e). *Backlund v. Barnhart*, 778 F.2d 1386,
27 1388 (9th Cir. 1985). Reconsideration is only appropriate if: (1) the court is presented with
28 newly discovered, previously unavailable, evidence; (2) the court committed a clear error of

1 law and the initial decision was manifestly unjust; or (3) there has been an intervening
 2 change in controlling law. *Sch. Dist. No. 1J, Multnomah County, Or. v. AC and S, Inc.*, 5
 3 F.3d 1255, 1262 (9th Cir. 1993); *United States ex rel Conveyor Rental & Sales Co. v. Aetna*
 4 *Casualty and Surety Co.*, 1991 WL 495733, *1 (D. Ariz. 1991). Such a motion, however,
 5 may not be used to re-litigate old matters or to raise arguments or present evidence that could
 6 have been raised prior to entry of judgment. *See, e.g., Fed. Deposit Ins. Agency v. World*
 7 *Univ.*, 978 F.2d 10, 16 (1st Cir. 1992); *accord Backlund*, 778 F.2d at 1388; 1 Wright, Miller,
 8 & Kane, Federal Practice and Procedure: Civil 2d § 2810.1 at 127-28.

9 The Plaintiffs do not allege that the controlling law has changed since this Court
 10 rendered its initial decision. Rather, they argue that the Court erred in its application of the
 11 facts of this case. As noted above, the Plaintiffs contend that the Court overlooked the
 12 Plaintiffs arguments. The Plaintiffs then proceed to reargue the same facts and argument that
 13 they presented in their opposition to the Defendant's Motion for Summary Judgment.

14 The Court did not fail to consider the arguments raised by the Plaintiffs in this case
 15 merely because it did not mention every single fact raised by the Plaintiff. The Plaintiffs are
 16 not entitled to reconsideration of the facts or arguments that they already raised in opposition
 17 to summary judgment. *Backlund*, 778 F.2d at 1388. Motions for reconsideration cannot be
 18 used to ask the Court "to rethink what the court has already thought through," merely
 19 because a plaintiff disagrees with the Court's decision. *Above the Belt, Inc. v. Mel Bohannon*
 20 *Roofing, Inc.*, 99 F.R.D. 99, 101 (E.D. Va. 1983); *See Refrigeration Sales Co.* 605 F.Supp.
 21 at 8. Such disagreements should be dealt with in the normal appellate process, not on a
 22 motion for reconsideration under Rule 59(e). *Database Am., Inc. v. Bellsouth Adver. &*
 23 *Pub'g Corp.*, 825 F.Supp. 1216, 1220 (D. N.J. 1993); *Refrigeration Sales Co., Inc. v.*
 24 *Mitchell-Jackson Inc.*, 605 F.Supp. 6, 7 (N.D. Ill. 1983).

25 This case does not fall within one of those narrow instances where reconsideration is
 26 appropriate. The moving party must show more than a disagreement with the court's
 27 decision; the court should not grant a motion for reconsideration unless there is need to
 28 correct a clear error of law or prevent manifest injustice. *Database Am., Inc.* 825 F.Supp. at

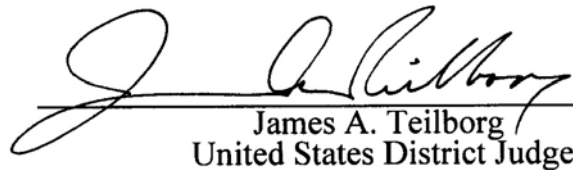
1 1220; *Refrigeration Sales Co., Inc.*, 605 F.Supp. at 7. Such is not the case here. The Court
2 finds that the Plaintiffs have failed to set forth sufficient grounds to cause the Court to
3 reconsider its August 24, 2006, Order granting summary judgment in favor of the Defendant
4 on the Plaintiffs' bad faith claim.

5 Accordingly,

6 IT IS ORDERED denying the Plaintiff's Motion for Reconsideration (doc. 113).

7 DATED this 13th day of September, 2006.

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



James A. Teilborg
United States District Judge